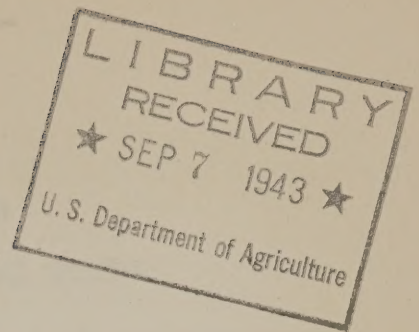


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New York State Milk Control Act

Paper No. 7. Series on State Milk Control Acts, Dairy Section, Agricultural Adjustment Administration, United States Department of Agriculture. March 15, 1937.

Introduction

This is one of a series of papers designed to make available, in a condensed and convenient form, information concerning State milk control acts, the type of regulations issued thereunder, and, in general, the legal developments in connection with their administration and enforcement. One paper will be devoted to each State having such an act.

It is expected that a general summary of all the State acts and regulations will be prepared when the review of individual State acts and regulations is completed. In this connection some comparison may be made. These papers omit much detail which might be helpful to those concerned with legislative or administrative problems of State milk control. Those who desire more complete information will undoubtedly find it to their advantage to get in touch with the officials charged with the administration of these acts.

STATE MILK CONTROL IN NEW YORK:

THE ACT, ITS ADMINISTRATION AND LEGAL STATUS

PART ONE

1. General Character of Legislation.

New York State's first milk control act was approved by the Governor on April 10, 1933. It was an emergency law to be effective from date of approval until March 31, 1934. In a legislative finding and statement of policy the law was declared to be enacted in the exercise of the police power of the State, and its purposes generally were to protect the public health and public welfare. In addition, it was declared that the existence of certain pernicious trade practices constituted a menace to the health, welfare and reasonable comfort of the people of the State; that to protect, promote, and preserve personal well-being and the public welfare, the production, transportation, manufacture, storage, distribution, and sale of milk in the State was declared to be "a business affecting the public health and interest." The finding and statement of policy further declared: (1) that the milk industry is a paramount industry upon which the prosperity of the State in large measure depends; (2) that the (then) present acute economic emergency was due partly to a severe and increasing disparity between the prices of milk and other commodities and this disparity, among other things, had seriously impaired the agricultural assets supporting the credit structure of the State.

At the expiration of this act in 1934, a new act was passed known as Chapter 126 of the Laws of 1934. This act, as amended, is the one to be considered in this outline.^{1/} This law differs from the act of 1933 and similar laws of other States in that it is divided in two major divisions, both of which are made parts of the Agriculture and Markets Law of the State of New York. The first division (Article 21) is permanent legislation prescribing general powers in relation to milk control, including the licensing and bonding of milk dealers, penalties for violation, keeping of records, enforcement procedures and the designation of an administrative agency within the Department of Agriculture and Markets. The second division (Article 21-A) is emergency legislation and contains

^{1/} Viz., Chapter 126 of the Laws of 1934 as amended by Chapters 10, 297, 401, 402, 403, and 404 of the Laws of 1935 and by Chapter 215 of the Laws of 1936.

the provisions relating to price fixing during the emergency period which ends April 1, 1937.^{2/}

Type of Governing Agency

The act of 1933 provided for a board of three members which should have general control of the production and sale of milk in the State, with power to license dealers, including storekeepers, and to fix the prices of milk to be paid producers and to be charged at resale. The law of 1934 created a division of milk control within the Department of Agriculture and Markets, the head of which is a director appointed by the Commissioner of Agriculture and Markets. The commissioner is vested with general control of milk and orders issued under the act are issued by him.

In Article 21-A is a provision for a milk advisory committee consisting of not less than 11 nor more than 15 members to be appointed by the commissioner, but not less than five of these shall be appointed from lists furnished by various producer and distributor organizations. This committee is advisory only to the commissioner.

Conditions under which powers of commissioner may be exercised.-The powers of the commissioner in regard to milk control are not limited by any requirement for preliminary requests for action by either producers or distributors. However, the provisions of the act for equalization of prices to producers (through market-wide pooling) and establishment of quotas (bases) for producers shall in neither case become operative until, by action of other States or by the Federal Government, equalization of prices to producers and establishment of quotas for producers have become effective throughout the New York milk shed. Furthermore, any order for equalization of prices must be approved by a majority vote of the advisory committee.^{3/}

Source of Financing

The activities of the Division of Milk Control are financed through direct appropriations by the State, but the State receives reimbursement from the license fees provided by the act.

^{2/} The emergency conditions set forth in the legislative declaration of the 1933 act are declared still to exist by the act of 1934 and the emergency period is extended until April 1, 1935. By Chapter 10, Laws of 1935, the emergency is continued until April 1, 1936, and, finally, by Chapter 215, Laws of 1936, extended until April 1, 1937.

^{3/} Thus far there has been no establishment of quotas or equalization of prices by the commissioner.

Statutory Protective Provisions

The validity of Articles 21 and 21-A is sought to be preserved by the inclusion in each: first, of a separability clause stating that if any portion is held to be invalid, the remaining provisions shall not be affected, and second, of a saving clause stating that none of the law's provisions shall be deemed to apply to interstate or foreign commerce except as may be permitted by the Federal Constitution and the laws of the United States.

II. Regulatory Provisions.

Powers of the Commissioner

The Department of Agriculture and Markets through the commissioner is vested with the following general powers:^{4/} (a) to supervise and regulate the entire milk industry of the State, including the production, transportation, manufacture, storage, distribution, delivery, and sale of milk^{5/} and milk products in the State;^{6/} (b) to investigate all matters pertaining to the production and handling of milk; and (c) to act as mediator and arbitrator in any controversy that may arise among or between producers and milk dealers as between themselves or as between them as groups.^{7/}

Investigation.- To assist the commissioner in his power to investigate all phases of the milk industry, he shall have power to subpoena milk dealers, their books, records, and accounts, and any other person from whom information may be desired to carry out the purposes and intent of the act (in its entirety), and may issue commissions to take depositions of witnesses absent from the State. Specific power is granted to any employee designated for the purpose to have access and entry to all places where milk is being stored, bottled, or manufactured, or where milk or milk products are being bought, sold, or handled, or where the books, papers, records, or documents relating to such transactions are kept, with power to inspect

^{4/} Under the permanent part of the act (Article 21).

^{5/} "Milk" as defined "means liquid milk and/or cream fresh, sour, or storage; and/or condensed or concentrated whole milk, except when contained in hermetically sealed cans. In each instance where quantity is referred to the intent is to include its whole milk equivalent."

^{6/} Subject to the limitation concerning the status of health, sanitary and public service laws or regulations, noted below.

^{7/} In the section vesting "general powers" it is provided that the conferring of a general power shall not be impaired or qualified by the granting of a specific power or powers.

and copy same, and to administer oaths and take testimony for the purpose of ascertaining facts deemed necessary and relevant for the enforcement of the act.^{8/}

Licensing powers.-- The definition of milk dealer is broad. It includes not only all sellers or buyers or handlers of milk but also brokers, agents, and cooperative associations, incorporated or not. Hotels and restaurants selling milk only for consumption on the premises and producers who deliver only to a milk dealer are excluded. All milk dealers buying from producers or others, or dealing in, handling, selling or distributing milk are required to be licensed, except that the commissioner may exempt those handling small quantities of milk in smaller communities of the State and may also exempt stores if they do not deliver by vehicle to consumers. Licenses are for a 12-month period and the license fees are graduated according to the amounts of milk handled and range, in general, from \$25 to \$5,000, but the act permits issuing licenses, in certain specified cases, upon payment of less than \$25 and, in practice, the amounts are \$3 and \$10, respectively. Sales of milk by a milk dealer outside of the State not involving the receipt or handling within the State are not to be included in fixing the license fee, nor is milk utilized in the form of manufactured products to be included in such determination, except the fluid milk equivalent of milk made into cream or into condensed or concentrated milk other than when sold in hermetically sealed cans.

Stringent provisions are applicable to the granting of a license and broad powers are given to revoke a license already issued. Not only is the applicant required to satisfy the commissioner as to his qualification by character, fitness, financial responsibility and equipment to properly conduct the business, but the commissioner may decline to grant and may suspend or revoke a license for various causes, 13 in number, including, (1) unreasonable rejection of milk purchased, (2) failure to account and pay for milk purchased without reasonable cause, (3) commission of any act injurious to public health, public welfare, or trade or commerce which has led to demoralization of the market or interfered with the milk supply, (4) insolvency, (5) failure to keep records or furnish records as required, (6) false statements, (7) violation of any provision of the act, (8) failure to give proper bond, and (9) revocation of health permit.

Bonding milk dealers.-- All milk dealers buying milk from producers for resale or manufacture are required to file a surety company bond in a sum fixed by the commissioner but not less than \$2,000 and based upon the amount of milk handled in a month. If, however, the applicant for a license is a natural person or a domestic corporation, the commissioner may, if satisfied his or its financial condition is such as reasonably to assure compensation to probable creditors, relieve the applicant from the filing of a bond or may permit deposit of cash or Federal or State bonds.

^{8/} The commissioner, under the Agriculture and Markets Act, has other powers in regard to investigation, filing of complaints and holding hearings, including provisions relating to the immunity of witnesses, which are probably supplemental to the milk control act and which have been utilized by the commissioner in various cases.

Records and reports.-- The commissioner may require licensees to furnish extensive records as to receipts, tests, prices paid, deductions or charges made, and all sales of milk, classification or grade, location and market prices of all milk sold, quantities of milk manufactured, records of wastage or losses of milk, records of items of spread or handling expense, and profit and loss, records of transactions affecting assets and liabilities of the licensee, and such other information and records as may be deemed necessary for enforcement of the article (Article 21). The commissioner is also authorized to require reports of matters for which records are required to be kept or such other facts as may be material within the scope of the purpose and intent of the act. There is no provision that information secured shall be kept confidential.

Provisions in Regard to Price Regulation^{9/}

Prices to be paid producers.-- The commissioner is authorized by the act, after making certain investigations, to fix, by official order, minimum prices to be paid to producers (and others) "for milk in its various grades and uses." The order shall apply to the locality or zone in which the milk is produced and may vary in the different localities or zones according to varying uses and different conditions. The investigations which the commissioner shall make upon which such price fixing is to be based are as follows: (1) consideration of what are reasonable costs and charges for producing, hauling, handling, processing and/or other services performed in respect to milk; (2) what prices for milk in the several localities and the markets of the State, and under varying conditions, will best protect the milk industry in the State and insure a sufficient supply of pure and wholesome milk to adults and minors in the State, and be most in the public interest. In addition, the commissioner "shall take into consideration the balance between production and consumption of milk, the costs of production and distribution, and the purchasing power of the public." Producers whose milk is purchased for shipment into another State where prices are regulated in a similar manner as in New York are to be paid at prices applicable in such State with proper allowance for transportation. It is to be noted that the commissioner may fix handling charges for milk, as well as prices; the portion of the act which specifically permits this reads: "Each order fixing prices or handling charges may classify milk by forms, classes, grades, or uses as the commissioner may deem advisable and may specify the minimum prices therefor."^{10/}

^{9/} Under Article 21-A.

^{10/} This part of the act varies from the original act which provided that prices to producers should be fixed after investigation by the board either on its own initiative or on complaint of a representative group of producers. It also provided that it was the intent of the legislature that the producer should have the benefit of increases in prices fixed to consumers, and that the board, if it found that such intent was not carried out, could suspend or revoke the license to the dealer and that the dealer should also be subject to the penalty provided in the act for violation.

Method of payment to producers; base rating and equalization provisional.-- In the absence of the as yet unfulfilled conditions in the law with respect to base rating and equalization (market-wide pooling), the method of payment to producers is simple. From the wording of the section it would be possible for the commissioner to permit dealers to pay their producers a flat price on a classified basis. In the latter case, the plan of payment would be that of the individual-dealer pool.11/

Resale prices.-- The investigations which the commissioner shall make before fixing producer prices and handling charges apply also to resale prices. After making such investigations the commissioner "may" fix by official order the "minimum and/or maximum wholesale or retail prices to be charged for milk handled within the state for fluid consumption and wheresoever produced," when (1) sold by milk dealers to consumers; (2) by milk dealers to stores either for consumption on the premises or resale to consumers; (3) by stores to consumers except for consumption on the premises where sold; (4) by milk dealers to other milk dealers. Minimum wholesale or retail prices are not to be fixed higher than is necessary to cover the cost of ordinarily efficient and economical milk dealers, including a reasonable return upon necessary investment.

Powers with respect to unfair competition and trade practices.-- There is nothing in the act (Articles 21 and 21-A) specifically authorizing the milk control authority to prohibit unfair competition and trade practices. Certain acts or conditions of such a character are either specifically prohibited by the law itself or made grounds for revocation of license.

Cooperation with other authorities.-- The commissioner is authorized to confer with legally constituted authorities of other States and of the United States "with respect to a uniform milk control within the states and/or as between states, and may exercise his power hereunder to effect such uniform milk control."

Limitations and Exceptions

Several limitations upon the power of the division of milk control have already been noted, including those with respect to equalization of prices and establishment of quotas for producers. Another important limitation contained in each article of the act provides that the article shall apply to the city of New York, but shall not alter or repeal laws or regulations of the State or the city of New York relating to health and sanitary requirements.

A limitation of a different sort -- upon other State agencies, not the division of milk control -- provides that no health officer of any county, city or village of the State shall approve any premises on which milk is produced or any plant in which milk is handled or authorize the shipment from such premises or plant for sale or use within the State without first satisfying the commissioner that such proposed added milk supply is reasonably needed for such municipality, will not deprive another

11/ For method of payment to producers by cooperatives see "Status of Cooperative Associations," below.

municipality of a supply, present or future, more conveniently related to it, and that such supply can be inspected and kept under inspection without undue expense. This provision is contained in Article 21 (permanent legislation).

Violation

Unlawful acts.-- In Article 21 it is declared unlawful for a dealer to buy milk from or sell milk to a dealer who is unlicensed, or in any way dealing in or handling milk which he has reason to believe has previously been dealt in or handled in violation of the provisions of the act. In Article 21-A it is declared unlawful (1) for any milk dealer, except where the commissioner shall otherwise determine, to pay a producer for milk to be sold in another State, under certain conditions, a price lower than that required to be paid for milk bought from a producer in such other State under similar conditions and for similar purposes; (2) for a dealer, after prices and/or handling charges have been fixed by the commissioner, to buy or sell or offer to sell or buy milk at any price less or more than at the price applicable to the particular transaction, whether by means of rebate, combination sale, etc.; and (3) for a licensee or a dealer required by the act to be licensed to sell within the State any milk having come to rest therein, which has been produced outside the State and bought from the producer or producers at a price lower than that required to be paid for milk produced within the State of New York purchased under similar conditions.^{12/}

Penalties.-- Any violation of the Agriculture and Markets Law is subject to civil penalties under sections 39 and 40 and is a misdemeanor under section 41. Violation of a price order can be prosecuted as a misdemeanor. (People v. Nebbia 262 N. Y. 259, affirmed 291 U. S. 502.)

Legal Remedies

Commissioner.-- The commissioner is given authority to institute proceedings at law or in equity as may appear necessary to enforce the provisions of the statutes, rules and orders committed to his administration and in addition to any other remedy available to him may apply for relief by injunction if necessary to protect the public interest, without having to allege or prove that an adequate remedy at law does not exist. Such application may be made to the Supreme Court in any district or county as provided in the Civil Practice Act and the rules of practice of the court, or to the Supreme Court in the Third Judicial District.

Aggrieved parties.-- In Article 21 the remedy of certiorari in the manner provided in the Civil Practice Act is authorized to review the refusal to grant a license or the revocation or suspension of a license. In Article 21-A an order of the commissioner made with respect to prices

^{12/} See discussion of the case of Baldwin v. Seelig in Part Three.

and/or handling charges to be charged or paid for milk, may likewise be reviewed by certiorari at the instance of any aggrieved person appearing of record at the hearing (required by the act), either in person or by personal representative, and opposing the making of the order.

Status of Cooperative Associations

By definition, cooperative corporations and unincorporated cooperative associations^{13/} are milk dealers. In Article 21 there is a provision declaring, in substance, that the operations of a cooperative association of dairymen, as defined in the paragraph, shall not be deemed to be in violation of the anti-trust laws. In Article 21-A there is a declaration of intent, in substance, that the provisions of the article shall not be deemed to interfere with the operations of a cooperative association, defined as in Article 21, engaged in making collective sales for producers and blending the net proceeds of sales in various classes, whether in fluid form or as manufactured products, both within and without the State, and paying its producers such blended price within such deductions and differentials as may be authorized by contract. Nor shall any milk dealer be prevented by Article 21 from buying from a cooperative in such manner. Contracts, however, between dealers and cooperatives are required to be upon the basis of the prices and handling charges fixed by the commissioner, with the result that the net price received by the cooperative shall be commensurate with such price and handling charges. Further, a cooperative shall not directly or indirectly give any discounts, rebates, etc., for the purpose or with the effect of reducing the net price to the dealer.

PART TWO

I. Administrative Procedure, Rules, Regulations and Orders.

General exercise of authority in State.— Resale price orders have been made applicable to different parts of the State, such prices varying to some extent to meet varying conditions in different areas. The minimum prices established for the City of New York are also applicable in Rockland and Westchester Counties as well as on Long Island.

Classification of milk.— The commissioner has established various classifications based upon the utilization of milk to be employed in payment of prices to producers and has fixed prices for milk sold in such classifications. The classifications in substance are as follows:

Class I milk. This includes whole milk utilized as fluid milk, in chocolate milk, cultured buttermilk, etc.

Class II-A milk. This includes milk used for fluid cream, sweet or sour, and storage cream used in the manufacture of sour cream.

Class II-B milk. This includes milk utilized in making plain condensed milk and certain cheeses.

^{13/} A cooperative corporation or association is defined as one organized under chapter seventy-seven of the consolidated laws of the State.

Class II-C milk. This includes milk used for the manufacture of ice cream in New York City and milk from which is derived fresh or storage cream and unsweetened condensed milk used in such manufacture.

Class II-D milk. This includes milk utilized for similar uses in ice cream outside of New York City.

Class II-E milk. This includes milk used in the manufacture of evaporated whole milk, condensed whole milk, milk chocolate, whole milk powder, malted milk, and milk used for cream cheese or other kinds of cheese, except those mentioned in Classes II-B and IV-B.

Class III milk is milk used in the manufacture of evaporated milk and certain enumerated types of cheese other than that designated in Class IV-B.

Class IV-A milk. This includes milk made into butter.

Class IV-B milk. This includes milk made into American cheese.^{14/}

The regulations provide for written permission from the commissioner for the utilization of milk in certain cases, the intent being to restrict the utilization of milk in the lower classes in form other than in the form in which it leaves the country plant of the purchaser except under circumstances approved by the commissioner, and there are also restrictions limiting the amount of milk which shall be put into the lower classes where a dealer buys not more than 1500 forty-quart cans of milk per month.

There is also a regulation establishing a presumption that in case a dealer buys milk both within and without the State that the milk marketed in Class I in New York State is purchased within the State, and likewise as to lower classifications a similar presumption in favor of producers is applicable in the case of dealers who buy from producers and also from dealers.

The price schedule provides for freight differentials for milk marketed in the metropolitan market which includes New York City, also various differentials, including butterfat differentials, Grade A milk differentials and a metropolitan area differential, applying to milk delivered by a producer to plants in the counties of Rockland and Westchester.

The freight differential is based on milk delivered at the 200-mile zone, that is, a distance of 200 miles from New York City, with plus differentials to producers at zones (zones being fixed on a 10-mile basis) nearer New York City and a minus differential for zones farther distant.

The price for Class III milk is based on the average price paid mid-west condenseries. Class IV-A price is based on the official New York average outside quotations for 92-score butter, less 4¢ a pound for making and with an over-run of 16 percent, and for Class IV milk, on the weekly quotations of cheese with differentials of various markets in Wisconsin and New York.

^{14/} Effective September 25, 1936, Class II-A, II-B and II-C were combined to make one class thereafter designated as Class II-A, and Classes II-D and II-E were combined to make one class thereafter designated as Class II-D.

PART THREE

Legal Status

Litigation under act.- There has been a considerable number of cases in the courts in reference to the constitutionality and construction of the New York law and also in regard to the proceedings of the board or its successor, the Commissioner of Agriculture and Markets.

The constitutionality of the act as to the power of price fixing was considered by the Court of Appeals of New York in the case of People vs. Nebbia, 262 N. Y. 259, and the act was upheld. This decision was affirmed by the U. S. Supreme Court in 291 U. S. 502.

The provision of the act in effect prohibiting the sale (on any terms) of milk in New York State bought in other States from producers at a lower price than required to be paid to New York producers under similar circumstances, was held invalid by the U. S. Supreme Court in Baldwin vs. Seelig, 294, U. S. 511. The Court held that this was true whether or not the milk was sold in original packages.

The effect of these decisions on the New York act is of very great importance. About 40 percent of the milk sold in the metropolitan market of the State is imported from other States and a considerable portion of that produced in the State is either exported to other States or is shipped in interstate commerce via New Jersey terminals. It is understood that the Commissioner of Agriculture has publicly stated that he has no control over any of this milk insofar as producers' prices are concerned. So far, apparently no case has finally decided the extent of the powers of the commissioner to fix resale prices in the State of milk handled in interstate commerce.

In some cases the question has been raised as to the reasonableness of prices. When fixing the minimum prices to be paid to producers and the minimum prices to be charged by dealers, the difference or spread between them need not be equal to the operating costs of a dealer nor assure him any prescribed return on investment. Hegeman Farms Corporation vs. Baldwin, 293, U. S. 163.

A peculiar situation has arisen resulting from a provision in the act, in substance, that no unlicensed milk dealer shall buy milk from producers or handle or sell within the State, nor buy from or sell milk to an unlicensed dealer. A number of dealers, whose applications for licenses have been denied or whose licenses have been revoked, are continuing in business under stays granted by the courts pending a review. In one case recently the Appellate Division of the New York Supreme Court held that an unlicensed dealer who had sold milk to a licensed dealer could not recover therefor. This case, Rosasco vs. Cohen, was reported in the New York Law Journal on January 8, 1937. Under this reasoning probably a licensed dealer who sells to an unlicensed dealer with knowledge of such lack of license will be unable to recover for milk so sold, and producers are probably in the same situation.

The provisions of the act in regard to cooperative associations were upheld as constitutional by the New York Court of Appeals in Matter of Eisenberg Farms vs. Baldwin, 265, N. Y. 662 (see also Mayflower Farms vs. Baldwin, 267, N. Y. 9) and it has been held that the license of a cooperative can be revoked if it sells to a dealer upon terms lower than the minimum prices from producers to dealers. Matter of Fort Hunter-Tribes Hill Cooperative vs. Baldwin, 243, App. Div. 846.

The one-cent differential for unadvertised brands of milk was upheld in Borden's Farm Products Company vs. Ten Eyck, 297 U. S. 251, but on the same date the limitation thereof to dealers in business on April 10, 1933, and continuously thereafter, was held invalid in Mayflower Farms, Inc., vs. Ten Eyck, 297, U. S. 266.

In Matter of Karsten Dairies, 243 App. Div. 656, the right of a dealer to borrow a portion of the monthly payments for sales of milk from his producers as a loan, but payable at convenience of the dealer, was considered and revocation of license was upheld.

The validity of the extension of the act as an emergency act, although raised in recent cases, has not yet been determined in the courts.

The U. S. Supreme Court in the second Borden case and Mayflower case, mentioned above, has clearly pointed out that the act upheld was a temporary one based upon emergency conditions. Also, the New York Court of Appeals in the Nebbia case indicated that the courts had power to determine as to the existence of the emergency. This has also been indicated in Chastleton Corp. vs. Sinclair, 264 U. S. 543.

It has been held that a revocation of license or refusal to grant a license must be upon a hearing and the applicant be given opportunity to subpoena witnesses. (See Matter of Grandview Dairy vs. Baldwin, 239 App. Div. 640 and Coney Island Dairy vs. Baldwin, 239 App. Div. 178.)

Although it has been held that the commissioner may refuse a license to a new dealer (Matter of Buffalo Creamery vs. Baldwin, 243, App. Div. 664), nevertheless in Matter of Elite Dairy Products Company, 271, N. Y. 488, the Court of Appeals indicated that it was very doubtful if the commissioner could refuse to license a dealer who was qualified by experience, equipment, etc., to carry on the business. The decision in the case, however, was made on technical grounds. The court also held that any refusal to grant a license, or revocation by the commissioner, should be upon findings.

In Ten Eyck vs. Lombard, 247 App. Div. 439, the court held it to be a question to be determined after trial as to whether a person performing services as a broker, but carried on the payroll as an employee, was in fact a broker.

In Linden Farms Milk and Cream Company vs. Ten Eyck, 284 N. Y. S. 721, it was held that the commissioner could properly revoke a dealer's license where the dealer had been guilty of numerous violations of the statute. (See also Bridgeville Farms vs. Baldwin, 265 N. Y. 32.)

In Ten Eyck vs. Eastern Farm Products, Inc., 160 Misc. 402, an injunction was granted against a dealer pendente lite until the furnishing of a surety bond to protect the producers, although the dealer claimed that he could not obtain the required bond and it was claimed that many of the producers did not want a bond to be required of him.

It has been held that unless orders of the board are arbitrary fiats, there can be no review except by certiorari. Cooperative Dairymen of Fraser vs. Ten Eyck, 158 Misc. 726. (See also Hegeman Farms vs. Baldwin, 293, U. S. 163.)

The question of the right of the commissioner in fixing prices to discriminate against milk in paper containers and in favor of milk in glass bottles has been raised in some recent cases but no final determination has been made on the subject - procedural questions being the chief points considered. (See Dairy-Sealed vs. Ten Eyck, 248 App. Div. 352.)

In Matter of Grandview Dairy, Inc. vs. Baldwin, 239 App. Div. 640, it was held that under the first milk control act (1933) the control board was without jurisdiction to determine that a dealer was guilty of violating any provision of the law or to direct the dealer to pay over any money, such power being restricted to the courts. Under the amended act, however, the commissioner is given authority to issue a license conditionally upon the agreement of the licensee or applicant to do any act, if such condition is appropriate to the administration of the act.